

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD.**

Original Application No. 747 of 2003

Tuesday, this the, 21st, day of October, 2008

Hon'ble Mr. K.S. Menon, Member (A)

Jugul Paswan S/o Khakhan Paswan R/o 357 EF, New Central Colony, Mughalsarai, Dt. Chandauli.

Applicant

By Advocates: Sri S.K. Dey,
Sri S.K. Mishra.

Vs.

1. Union of India through the General Manager, E.C. Rly. Hajipur, Bihar.
2. The Divisional Rly. Manager, E.C. Rly. Mughalsarai, Dt. Chandauli.

Respondents

By Advocate: Sri K.P. Singh

ORDER

By K.S. Menon, Member (A)

This O.A. has been filed against the impugned order dated 15.05.2003 by the respondent No. 2 by which damage rent was proposed to be recovered from the applicant for unauthorized retention of Railway quarter beyond the period 31.07.1998. The applicant has sought the following relief (s): -

- "(i) That this Hon'ble Court may be pleased to quash the impugned order dated 15.5.2003 for recovery of damage rent and to transfer allotment of quarter No. 357/EF in favour of his son named Binod Kumar Paswan posted as Dy. Station Superintendent E.C. Rly., Mughalsarai.***
- (ii) That this Hon'ble Court may be pleased to make payment his D.C.R.G. and complimentary pass after due fixation of pay under 5th Pay Commission effected from 1.1.1996 with due interest.***
- (iii) Any other relief or reliefs to which he is entitled may also be awarded to him.***

2. The facts of the applicant's case is that he joined Railway service on 20.08.1959 and retired as M.C.M.u./SSE/Power House/MGS on 30.11.1997 at which point of time his pay was Rs.1850/- in the pay scale Rs.1400-2300. This pay scale was revised to Rs. 5000-8000 w.e.f. 01.01.1996, but his scale was not revised and his retirement benefits of Provident Fund, Leave Encashment and Pension was calculated on the pre revised pay scale. D.C.R.G. was withheld which the applicant claims is not permissible in the light of the Judgment in 1995 SCC (L&S) page 13 and O.A. No. 532 of 1994 of the Central Administrative Tribunal, Allahabad Bench. Even the two sets of Complimentary passes due to him, were not issued to him.

3. The applicant submits that after his retirement he could not vacate his quarter No. 357/EF New Central Colony, Mughalsarai, due to his wife's illness. He applied on 02.11.2002 to allot the said quarter in favour of his son Binod Kumar Paswan, who was posted as Deputy Station Superintendent, E.C. Railway, Mughalsarai but no action was taken by the respondents despite another application submitted on 06.11.2002 by his son Shri Binod Kumar Paswan seeking the said quarter be transferred to his name (Annexure A-3 and Annexure A-4 to Compilation No. 2). The applicant submits that his son is entitled to the said quarter as he has not been allotted a quarter nor is he being paid any House Rent Allowance, and as per Railway Board letter dated 20.11.1991 it can be transferred to his son after the applicant's retirement. The respondents filed a case under Section 4 of the Public Premises Act, which was decided by the Estate Officer on 31.10.2002 against the applicant (annexure No. A-6/Compilation No. 2). Being aggrieved the applicant filed an appeal No. 32 of 2002 before the District Judge, Chandauli, who while allowing the appeal stayed the execution of order dated 31.10.2002 vide his Order dated 12.11.2002 (Annexure A-7 to Compilation No. 2): The applicant states that the respondents proceeded to recover damage rent vide their Order dated 15.05.2003. The applicant represented against the said impugned order on 20.05.2003 and contends that the Estate Officer who is competent to assess the damage has not given any finding on this aspect in his order, therefore, the respondents have arbitrarily and illegally assessed the damage rent and issued the impugned order dated 15.05.2003,

without giving him a reasonable opportunity. He therefore prays that the impugned order dated 15.05.2003 be quashed and the respondents be directed to refix his salary on the revised pay scale and release his retiral benefits as per the revised pay alongwith interest as also the Complimentary pass due to him. He further prays that the quarter not vacated by him be allotted to his son who is posted as Deputy Station Superintendent, E.C. Railway, Mughalsarai. The respondents were directed not to recover any damage rent from the applicant as ordered in the impugned letter dated 15.05.2003 by an interim order of this Tribunal dated 14.07.2003, which is still continuing.

4. The respondents have filed their parawise Counter Reply. They submit that the applicant retired on 30.11.1997 and was drawing Rs.1850/- as pay in the scale of Rs.1400-2300. His pension and retiral benefits were paid to him as per extant rules. Subsequently based on the 5th Central Pay Commission recommendations he was paid all his revised retiral benefits w.e.f. 01.01.1996 (Annexure A-1 to the C.A.) except DCRG which was due to the fact that the applicant had not vacated the Railway Quarter.

5. On the issue of Railway passes not being issued to the applicant, the respondents maintain that as per para 7 (iii) of Railway Board's letter dated 03.11.2000 (RBE No. 208/2000) one set of post retirement pass should be disallowed for every month of unauthorized retention of railway quarters (Annexure A-2 to C.A.). Accordingly Railway passes were not issued to the applicant in accordance with the rules. The rules permit an employee to retain his quarter with permission for a period of four months on normal rent after retirement and for the next four months on educational or sickness grounds on payment of special license fee/rent beyond the permitted period. No extensions on any ground were to be allowed. On retirement the applicant applied for retention of the quarter due to his wife illness, respondents permitted him to retain the same for 8 months i.e. 01.12.1997 to 31.07.1997 as per extant rules with direction to vacate after expiry of the permissible period. The applicant son's request for allotment of the quarter in his name was not acceded to. The quarter in question belonged to different department than that of the applicant son's department and each

department maintains its own pool and priority list. The railway quarter can only be allotted to his son as per his turn in the priority list maintained by the respective department through the Quarter Committee. Besides as the applicant's son joined the Railways on 31.10.2002 i.e. well after his father retired, he is in any case not eligible to get the said quarter transferred to his name as per Railway Board's circular dated 25.06.1966. Since the applicant is in unauthorized occupancy of the quarter beyond the permissible period and he had been served a notice to this effect therefore according to rules damage rent has been levied by the respondents and withheld from his D.C.R.G. as per rules. In view of the above the applicant is not entitled to any benefit/relief as prayed for in this O.A. as such the interim order dated 14.07.2003 should be vacated and the O.A. itself be dismissed.

6. In his Rejoinder, reply to the C.A., the applicant avers that, the Estate Officer who is the only competent authority under the PP Act to pass orders on the damage rent has not mentioned anything to this effect in his order, therefore, the respondents are not competent to order recovery of damage rent. Besides no damage rent can be recovered from the DCRG in view of Supreme Court's Judgment in the case of Union of India vs. Madan Mohan reported in 2003 ATJ 246 and 2001 ATJ 545 SC. The applicant has also relied on the following Judgments/orders in support of his contentions: -

- (1) ***O.A. No. 118 of 2001 Prabhawati Devi vs. Union of India decided on 11.08.2003 (Allahabad).***
- (2) ***O.A. No. 299 of 1995 decided on 04.03.2003 Calcutta Bench N.C. Bose vs. Union of India.***
- (3) ***O.A. No. 537 of 1994 decided on 28.08.1997 Allahabad Bench.***

In all the above orders, the facts and circumstances of those cases are different from the facts and circumstances in the present O.A.

7. The applicant reiterates that his pay was never fixed in the revised pay scale nor was he given any retiral benefits based on the same, in support of this submission he relies on letter dated 20.11.1997 and the calculations at annexure R-1 of the R.A. respectively.

8. Heard Shri S.K. Dey and Shri S.K. Mishra, learned counsels for the applicant and Shri K.P. Singh, learned counsel for the respondents and perused the pleadings in detail.

9. The applicant's contention that his pay has not been fixed as per recommendations of the 5th Central Pay Commission and consequently his retiral benefits have been wrongly calculated is without any basis. The respondents have clearly indicated in Annexure-I to the counter affidavit that the statement of fixation of pay under Railway Service (Revised Pay) Rules 1997, the applicant's pay has been fixed in the revised pay scale of Rs.5000-8000 as per (columns 8, 9 and 10) of the said statement. The applicant's pay has accordingly been fixed in the new pay scale and consequently retiral benefits have also been accordingly calculated and paid to the applicant except DCRG.

10. The relevant rule position in this regard reads as under: -

"Sub-rule (8) of Rule 16 of Rly. Service (Pension) Rules, 1993.

- () (a) *In case where a Rly. Accommodation is not vacated after superannuation of the Rly. Servant or after cessation of his services such as on voluntary retirement, compulsory retirement, Medical invalidation or death, then the full amount of retirement gratuity, death gratuity or special contribution to provident fund, as the case may be, shall be withheld.*
- (b) *The amount withheld under clause (a) shall remain with the Rly. Administration in the form of cash.*
- (c) *In case the Rly. Accommodation is not vacated even after the permissible period of retention after the superannuation, retirement, cessation of service or death, as the case may be, the Rly. Administration shall have the right to withhold, recover, or adjust from the death-cum-retirement Gratuity, the normal rent, special licence fee or damage rent, as may be due from the ex-Rly. Employee and return only the balance, if any, on vacation of the Rly. accommodation.*

The applicant has relied upon the Supreme Court's Judgment in the case of U.O.I. vs. Madan Mohan reported in 2003^{2w ATJ 246,} relevant extract of the aforesaid order reads as under: -

"The relevant rule applicable so far as the respondent is concerned is rule 323 which is available in the manual of Railway Pension Rules, 1950. It is made clear therein that claim against the railway servant may be on account of three circumstances;

"(a) losses (including short collection in freight charges shortage in stores) caused to the government as a result of negligence or fraud on the part of the railways servant while he was in service;

(b) other government dues such as overpayment on account of pay and allowances, or admitted and obvious dues such as house rent, post office, life insurance prima, outstanding advance etc.;

c) non-government dues. "

3. *It cannot be said that the case put forth on behalf of the appellants can be brought in any one of these categories. The claim made on behalf of the appellants is not only to collect normal house rent but also penal damages, in addition. That is not within the scope of rule 323 at all. What is contemplated there is 'admitted' and 'obvious' dues. The payment resulting in penal damages is neither 'admitted' nor 'obvious' dues apart from the fact that determination has to be made in such a matter. It is also permissible under relevant rules to waive the same in appropriate cases. In that view of the matter, it cannot be said that such due is either 'admitted' or 'obvious'. Hence, we do not think that the view taken by the tribunal calls for any interference. However, it is made clear that while the appellants have to disburse the DCRG to the respondent the normal house rent, inclusive of electricity and water charges, which are 'admitted' or 'obvious' dues can be deducted out of the same, if still due."*

As per the above Judgment, it seems that respondents cannot withhold damage or penal rent from the DCRG of the applicant, on the grounds that these charges are not 'committed' or 'obvious' charges. There is however another Judgment of the Supreme Court in the case of Wazir Chand vs. Union of India 2001 (6) SCC 596, relevant extract of which is as under: -

"The appellant having unauthorisedly occupied the government quarters was liable to pay the penal rent in accordance with rules and, therefore, there is no illegality in those dues being adjusted against the death-cum-retirement dues of the appellant. We, therefore, see no illegality in the impugned order which requires our interference. The appeals stand dismissed."

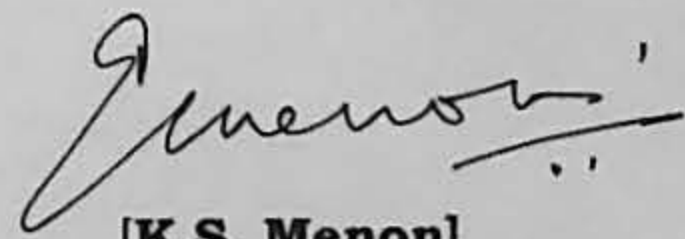
In the above Judgment, Supreme Court has held that "if the appellant has overstayed in a Quarter allotted to him beyond the permissible period, then he is in unauthorized occupation of the said quarter is therefore liable to pay penal or damage rent according to the rules in force. In the present case the applicant has continued to stay in the said quarter for a period of 10 years beyond the permissible period and is therefore liable to pay penal/damage rent for the unauthorized period. The penal or damage rent could logically be categorized as committed charges once unauthorized occupation is established after due proceedings under the Public

Premises Act. In that view of the matter, recovery of the same can only be effected from the applicant's DCRG.

The respondents were therefore well within their rights to levy damage rent as per rules as the Estate Officer passed orders on 31.10.2002 regarding the applicant being in unauthorized occupation of the quarter. The said order of the Estate Officer was stayed by this Tribunal vide its interim order dated 14.07.2003 and by the District Judge, Chandauli, who vide his Order dated 12.11.2002 (annexure A-7 to Compilation No. II) passed in the Appeal filed by the applicant stayed the operation of the Estate Officer's Order dated 31.10.2002. Both the parties have however not thrown any light on the final outcome of the appeal pending before the District Judge, Chandauli. Since the Order regarding unauthorized occupation has been stayed by the District Judge, Chandauli in appeal, the respondents could not have passed the Order dated 15.05.2003, levying damage rent on the applicant for the period of "unauthorized occupation". The impugned order of the respondents dated 15.05.2003 levying damage rent is therefore bad in law. The applicant has however not been put to any loss in view of the interim order of this Court dated 14.07.2003, staying the recovery of damage rent.

11. In view of the above the case is remanded to the respondents to reconsider the case after the appeal of the applicant before the District Judge, Chandauli, which ^{is now} stated to be pending, is finally disposed off and then pass Orders accordingly with regard to levy and recovery of damage rent.

12. O.A. is disposed off with the above directions. No cost.


[K.S. Menon]
Member 'A'

/M.M/